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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

Elehue Kawika Freemon and
Lucille K. Freemon,

Complainants,

v.

AT&T Corp.,

Defendant.

CC Docket No. 94-89

File No. E-90-393

BRIEF FOR THE COMMON CARRIER BUREAU

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

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December 6, 1994

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)	
Defendant.)	

BRIEF FOR THE COMMON CARRIER BUREAU

TO: The Honorable Walter C. Miller
Administrative Law Judge

Pursuant to the request of the Presiding Judge at the evidentiary session held in this matter on November 28, 1994,¹ the Chief, Common Carrier Bureau (Bureau), through her undersigned counsel, submits this Brief identifying the material questions of fact to be resolved by the Presiding Judge in the above-captioned proceeding.

The Commission designated this matter for hearing to resolve material questions of fact surrounding AT&T Corp's (formerly American Telephone and Telegraph Company's) handling of an operator-assisted call involving the complainants, Elehue K.

1 Transcript of Proceedings, Evidentiary Admission Session (TR.), Freemon v. AT&T Corp., CC Docket No. 94-89, p. 52, line 2 (Nov. 28, 1994).

Freemon and Lucille K. Freemon on May 30, 1988.² The Commission found that further evidentiary proceedings were necessary to determine whether the AT&T Operator's actions in transferring Elehue K. Freemon's call to Gresham, Oregon emergency services "were taken in the ordinary course of handling [the call] or whether she connected the call to [Lucille K. Freemon] and then monitored it to determine that an emergency situation existed."³ The Commission said that "in the latter event, such actions could raise a question of lawfulness under section 705" of the Communications Act.⁴

In the Bureau's view, the principal facts in dispute center around the Freemons' allegation that the AT&T operator listened to their "eight-minute" telephone conversation and then interrupted to ask Lucille Freemon if Elehue Freemon needed medical help. AT&T denies that any conversation ever took place between the Freemons during the call. Under AT&T's version of the facts, the operator: (1) determined that Elehue Freemon was in an emergency condition when he attempted to place the operator-assisted call; (2) questioned Lucille Freemon about emergency help for Elehue Freemon and (3) transferred the call to emergency services without ever connecting the Freemons to each other. It was these widely divergent claims that the Commission was unable to

² Hearing Designation Order, 9 FCC Rcd 4032 (1994).

³ Id. at 4033.

⁴ Id.

resolve on the record before it and it is the parties' continuing dispute over these facts that must be resolved by the Presiding Judge.

If it can be established that no telephone conversation took place between Elehue Freemon and Lucille Freemon as alleged in the complaint, the Bureau would submit that the Freemons have no basis for their claims under Section 705 and their complaint should be denied accordingly. On the other hand, if it can be shown that a conversation did in fact take place between Elehue Freemon and Lucille Freemon as alleged in the complaint, the Presiding Judge could reasonably conclude that AT&T's operator handled the Freemons' call in a manner inconsistent with Section 705.⁵

Without addressing the weight or merits of the evidence identified by the parties during the recent evidentiary admission session in support of support their respective claims, the Bureau identifies the following material questions of fact which, in its view, must be resolved by the Presiding Judge:

1. Whether any conversation occurred between Elehue Freemon and Lucille Freemon during the operator-assisted

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The Bureau notes that the complainant elected not to submit evidence to support the damages claims set forth in his complaint in this matter. It would thus appear that Mr. Freemon does not intend to further pursue his damages claims. TR., p. 114, line 14.

call that Elehue Freemon placed or attempted to place to Lucille Freemon on May 30, 1988.

2. If such conversation took place, whether AT&T, through its operator or otherwise, disclosed the fact or contents of the Freemons' conversation to the Gresham, Oregon Emergency Services without the requisite authorization within the meaning of Section 705 of the Act.

Respectfully submitted,

Kathleen M. H. Wallman
Chief, Common Carrier Bureau

By 

for Thomas D. Wyatt

Chief, Formal Complaints and
Investigations Branch



Keith Nichols
Trial Attorney

December 6, 1994

CERTIFICATE OF SERVICE

I, Keith Nichols, do hereby certify on this, the 6th day of December 1994,
I have served copies of the foregoing "BRIEF FOR THE COMMON CARRIER BUREAU" by
first-class, U.S. Mail, on the following:

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Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554

December 6, 1994
Date


Keith Nichols